

REMARKS

The Applicant responds to a Final Office Action sent on 4 May 2004, the Final Office Action reported the examination of Applicant's amended claims 1-11, and the added new Claims 12-24. Claims 1-24 are pending. The Office Action rejected Claims 1-24 under 35 U.S.C. §102(a) as being anticipated by Anderson et al (U S Patent No 5,974,396).

CLAIM REJECTIONS -35 USC § 102

The Office Action rejected Claim 1 finding the presence of the limitation of "at least one extensible transaction database for storing flexible representations of product definitions" and based the rejection on the teaching in column 3, lines 30-40. In fact, the teaching of Anderson actually points away from a "flexible" representation of the product, defining the products instead, according to the stated teaching of Anderson at column 3, lines 30-40 states specifically:

A system according to the present invention for optimizing retail marketing operations based on purchasing transactions of consumer products includes as basic components:

a relational database, means for receiving consumer identifying data and product purchase transactional data,

means for grouping that data into clusters of information *based on predefined criteria*,

means for storing the cluster information in the database, and means for analyzing the stored cluster information to determine buying behaviors of retail consumers.

Because the definition of flexible as being "characterized by a ready capability to adapt to new, different, or changing requirements" (Merriam-Webster on line at www.m-w.com). The


25315

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- 13 -

XPWZ-1-1006ROA2

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“predefined criteria” taught in Anderson is specifically antithetical to the “flexible definition” taught in the application.

For this reason, the Applicant respectfully asserts that lacking the limitation of a flexible, rather than a predefined criterion for defining products, Anderson cannot be said to anticipate the application. Further, the application is directed toward breaking traditional packages down constituent components (Page 13, Lines 6-19), whereas Anderson teaches the compounding of individual products into complexes of products or clusters (Column 3, Lines 9-19).

The Office Action further rejected Claim 2, based upon the assertion that Anderson teaches means for comparing one or more commoditized sellable units represented by the flexible representations stored in the at least one extensible transaction database with other commoditized sellable units derived from vendor offers (Column 7, Lines 5-64). Again, however, Applicant asserts that Anderson teaches away from the “flexible” definition based upon constituent parts, but rather, expressly teaches the use of UPC codes (Column 7, Lines 31-37). Rather than building out constituent parts into product offerings, Anderson, again, teaches the compounding of several already defined products into distinct promotional offerings.

The Office Action further rejects Claim 3, 5, and 6 as anticipated by the teaching of Anderson, and Claim 4 as being obvious because of the teachings of Anderson in view of the fact that vendors regularly augment demographic data with credit reports. Because, however, the rejections are based on an understanding that Anderson teaches a *smallest indivisible sales unit* rather than a definition based upon predefined criteria. As indicated above with respect to Claims 1 and 2, Anderson teaches the use of the UPC as the basis of the transaction database. Yet it is Anderson’s own teaching that the purpose of the patented invention is to aggregate several products into specific offerings.

The Applicant asks the Examiner to take Examiner’s notice of the fact that the UPC is used on packages containing multiple products, each of which could be separately purchased. In

fact, the UPC is a packaging code rather than a product code in spite of its name. For instance, where a toilet brush is packaged with a toilet detergent, that package will bear a UPC that is distinct from the UPC assigned to either of the constituent products. It is common knowledge that one of the purposes of the UPC is to indicate inventory states to the vendors. Thus, the only useful knowledge a UPC can impart, it does impart where assigned UPCs are unique for each package.

Use of the UPC as the transaction database teaches away from aggregated products such as the toilet bowl brush and the toilet detergent set forth above. According to Claim 3, and the teaching of the specification as relates thereto, the smallest indivisible sales unit limitation would require that the combination of brush and detergent be assigned at least two codes, one for each of the distinct products therein and two quantities, one brush and some number of units of detergent, likely ounces. In that the specific language present in Anderson teaches away from the independent Claim 3, Applicant respectfully asserts that the limitation of a flexible definition is nowhere present in Anderson. That same limitation occurs in the dependent claims 4, 5, and 6 and therefore, the four claims are patentably distinct from Anderson.

The Office Action rejected Claim 7-11 as anticipated by Anderson, but again, the Applicant respectfully asserts that Anderson teaches toward the UPC as the “atoms” of the economic study. Rather, the adherence to the UPC as taught will only confirm or deny the vendor’s selection of product sizes by relative numbers of sales. As taught, the isolation of a “smallest indivisible sales unit” gives vendors signals that will point to new packaging options. Thus, where analysis indicates that consumers traditionally buy several packages defined in terms of smallest indivisible units of table napkins when purchasing a napkin dispenser, the vendor may suitably package both a new number of unit napkins reflective of current purchase habits of the consumers when purchasing the included napkin dispenser. Thus, the application as currently amended, teaches selecting a number of smallest indivisible units for bundling rather

than merely one of an existing number of product packages. It is an object of the current application to teach repackaging of products according to the most popular numbers of smallest indivisible sales units and their most likely product companions according to consumer sales in each demographic unit.

The Office Action rejected Claim 12 because Claim 12 is written as a method and contains essentially the same limitations as Claim 3, therefore, the Office Action applied the same rejection. As amended, includes, as in the amended Claim 3, the limitation of the smallest indivisible sales units. Again, as Anderson relies upon the UPC rather than this more “atomized” teaching of the application (see Abstract). As set out above, the UPC is a package code rather than a product code and because a purpose of the invention is to examine more than merely the travel of the already selected package sizes from off of the shelf, the study of smallest indivisible sales units is a limitation present in Claim 12 that is not taught in Anderson and Anderson is not merely the invention without the study of the smallest indivisible sales units. Anderson tracks only those products identified by the UPC in the quantities and units defined by the manufacturer. The instant invention is configured to provide feedback from the consumer to the vendor, not merely of existent sizes or quantities of goods but rather to view the consumer’s predilections toward particular sizes and quantities of consumer goods, not merely packages of those goods. Applicant respectfully asserts that as written, Claim 12 is allowable over Anderson.

While the Office Action rejected Claim 13 on the basis that Claim 13 is written as a data processing system and contains essentially the same limitations as the combination of claims 7 and 8, therefore, the same rejection is applied. As Claim 13 specifically claims elemental definitions of salable units, Applicant asserts that the language, as with smallest indivisible sales units, seeks to claim matter that is patentably distinct from the use of the UPC taught in Anderson. Elemental means “of, relating to, or being the basic or essential constituent of something ... of, relating to, or dealing with the rudiments of something” (Merriam-Webster on

line at www.m-w.com). In teaching that the transaction database stores elemental definitions, the teaching is at odds with the complete package inherent in the UPC.

The Office Action rejected Claim 14 in that Anderson teaches collecting data from a plurality of consumers' bills, analyzing the collected data predicting purchases the consumers may be likely to make based on the analysis, and designing offers to the consumers based on the predicted purchases. Anderson, however, only teaches enablement to a method relating to UPC databases. The present invention, teaches a process of breaking products down to quantities of products according to "elemental definitions of salable units." At the UPC level of granularity, no relationship is observed between 8, 12, 16, and 20 ounce beverage sizes, nor is there a discernable relationship between single service laundry detergent and its Economy-Sized 72 wash load package. Again, not merely packages but definitions of products are implicated by the teaching of the application. Accordingly, Applicant respectfully asserts that Claim 14 is allowable over the teaching of Anderson based upon the distinct teaching as to product definitions.

As to Claim 15, depending from Claim 14, while Anderson may teach at least one of the steps of collecting data, the data is not directed to the elemental definitions of the products. As it depends from Claim 14, it too is allowable over Anderson.

Claim 16 depends from Claim 14 and would itself be allowable on that basis. However, additionally, the Claim is allowable on the basis that it includes an element that further distinguishes the teaching from Anderson. By teaching the use of the UPC, Anderson is irreconcilably committed to a system dependent upon the brand name and vendor of the product defined by terms that the transaction database holds. There is nothing in Anderson that preserves or teaches the sense that a unit of Ker-o-son™ is fungible with a unit of Sunoco™ kerosene for use in a kerosene warmer. Similarly, there is nothing that, as taught, will allow the system of

Anderson to compare Pillsbury™ with Gold Medal™ all purpose flour. Claim 16 specifically calls out this limitation and is allowable over Anderson.

Claim 17 Anderson does not explicitly teach aggregating and comparing offers. However, the Office Action asserts that:

Anderson does teach (Abstract) Consumer retail transactions are analyzed in terms of product and/or consumer clusters to determine relationships between the consumers and the products. Product, consumer, and transactional data are maintained in a relational database. Targeting of specific consumers with marketing and other promotional literature is based on consumer buying habits, needs, demographics, etc. A retailer queries the database using selected criteria, accumulates data from the database in response to that query and makes prudent business and marketing decisions based on that response. This disclosure encompasses aggregating and comparing offers through the analyses of consumer retail transactions for these offers.

Anderson does not include an enabling teaching that sets forth an algorithm for analysis that would allow for aggregating and comparing offers. Without the elemental definitions taught in the instant application, Anderson is not capable of comparing Fleishmann's™ and Red Star™ bakers' yeast. A "wish list" of uses contained in an abstract are not an enabling teaching. Such is not to say that if some means of comparison had been taught in the abstract that Anderson might not be cited against the application but no such meaningful teaching is present in Anderson.

In Examining Claim 18, the Office Action asserts that Anderson teaches encoding data from vendor offers into one or more of the same standardized constituent parts but again, Anderson teaches only the use of codes such as the UPC such that the discussion of constituent parts is limited to distinct packages of diverse products, thereby teaching away from the greater discernment of commoditized goods as "constituent parts." Additionally, Claim 18 depends from Claim 14 and is allowable over Anderson on that basis.

In Examining Claim 19, the Office Action asserts that Claim 19 “is written as a method and contains essentially the same limitations as Claim 1, therefore, the same rejection is applied.” Applicant respectfully reasserts as Applicant has in the discussion of Claim 1, that Claim 1 includes the limitation “flexible representation of product definitions” and therefore the “predefined criteria” of Anderson is specifically antithetical to the “flexible definition” taught in the application. Claim 19 is properly allowable over Anderson based upon that distinction.

Claims 20 and 21, depend from Claim 19 and are allowable over Anderson as set forth in the discussion of Claim 19.

Claim 22, the Office Action asserts, is a system for implementing Claim 7’s method. Applicant respectfully asserts that Anderson teaches toward the UPC as the “atoms” of the economic study. Rather, the adherence to the UPC as taught will only confirm or deny the vendor’s selection of product sizes by relative numbers of sales. As taught, the isolation of a “smallest indivisible sales unit” gives vendors signals that will point to new packaging options. Thus, where analysis indicates that consumers traditionally buy several packages defined in terms of smallest indivisible units of table napkins when purchasing a napkin dispenser, the vendor may suitably package both a new number of unit napkins reflective of current purchase habits of the consumers when purchasing the included napkin dispenser. Thus, the application as currently amended, teaches selecting a number of smallest indivisible units for bundling rather than merely one of an existing number of product packages.

Similarly, with respect to Claims 23 and 24, the Office Action asserts that Claim 23 is written as a method and Claim 24 as a system and contain essentially the same limitations as claim 12, therefore, the same rejection is applied. As set out above, the UPC is a package code rather than a product code and because a purpose of the invention is to examine more than merely the travel of the already selected package sizes from off of the shelf, the study of smallest indivisible sales units is a limitation present in Claim 12 that is not taught in Anderson and

Anderson is not merely the invention without the study of the smallest indivisible sales units. Anderson tracks only those products identified by the UPC in the quantities and units defined by the manufacturer. The instant invention is configured to provide feedback from the consumer to the vendor, not merely of existent sizes or quantities of goods but rather to view the consumer's predilections toward particular sizes and quantities of consumer goods, not merely packages of those goods. Applicant respectfully asserts that as written, Claim 23 is allowable over Anderson.

CLAIM REJECTIONS -35 USC § 103

The Office Action rejected Claims 4 and 11 under 35 U S C 103(a) as being unpatentable over Anderson et al (U S Patent No 5,974,396) as applied to claims 3 and 7 above, and further view of Official Notice. As set forth, above, however, the teaching of Anderson is based upon the UPC database and in all instances, the UPC does not teach an elemental definition of products as set forth above with respect to the independent claims from which 4 and 11 depend. For these reasons, Claims 4 and 11 cannot be combined to teach the invention on the application and, thus, Claims 4 and 11 are allowable as are the allowable claims from which they depend.


25315

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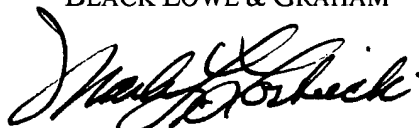
CONCLUSION

For the reasons set forth above, the pending claims, Claims 1 through 24 are allowable. The Applicant respectfully asserts that the rejections having been met, the pending claims are in a state of allowability. Applicant requests the Examiner find the pending claims allowable.

Applicant respectfully requests that any issues or questions raised by the above set forth arguments, amendments, and clarifications be addressed to the Applicant in the person of his undersigned attorney of record. The Applicant thanks the Examiner for his kind attention in the Examination of this application.

Respectfully submitted,

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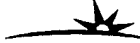
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- 21 -

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